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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
CALIFORNIA NORTHERN DISTRICT (SAN FRANCISCO)**

HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
HOME EQUITY LOAN TRUST SERIES
ACE 2006-HE1,

Plaintiff,

vs.

MARK SERRATO; SANDRA J.
SERRATO and DOES 1 to 10, inclusive

Defendant.

CASE NO. **3:13-cv-01968**

Honorable Judge Joseph C. Spero

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFF'S
MOTION TO REMAND**

Plaintiff HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE
FOR HOME EQUITY LOAN TRUST SERIES ACE 2006-HE1 ("HSBC BANK")
hereby requests that this Court take judicial notice, under Federal Rules of Evidence
201, of the attached documents marked as Exhibit 1, and Exhibit 2.

EXHIBIT NO.

DOCUMENT

Exhibit 1

Complaint for Unlawful Detainer filed on December 31, 2012, against Defendant Mark Serrato; Sandra J. Serrato for possession of the real property located at 19390 Corey Way, Castro Valley, California 94546 Superior Court of the State of California, County of Alameda, Hayward Court Case No. HG12661699.

Exhibit 2

Defendant's Notice of Removal, Northern District of California. Filed April 30, 2013.

This Request for Judicial Notice is made under Federal Rule of Evidence 201 on the grounds that the Court is properly entitled to take judicial notice of these documents under the above authority.

Respectfully submitted,

Dated: May 9, 2013

BY: /s/ James T. Lee

JAMES T. LEE, attorney for Plaintiff

EXHIBIT 1

**SUMMONS
(CITACION JUDICIAL)
UNLAWFUL DETAINER-EVICTION
(RETENCIÓN ILÍCITA DE UN INMUEBLE-DESALOJO)**

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

MARK SERRATO; SANDRA J. SERRATO; and DOBS 1 to 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Additional Parties Attachment form is attached.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ENDORSED
FILED
ALAMEDA COUNTY****DEC 31 2012****CLERK OF THE SUPERIOR COURT****By Jennifer Daley, Deputy**

You have **5 CALENDAR DAYS** after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. (If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene **5 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

CAGE NUMBER **HC12661699**
(Número del caso)

1. The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA

24405 AMADOR ST

HAYWARD, California 94544

COUNTY OF ALAMEDA

HAYWARD HALL OF JUSTICE HAYWARD HALL OF JUSTICE

2. The name, address and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JAMES T. LEE, SBN 110838

(626) 915-5714

BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP

20955 PATHFINDER ROAD, SUITE 300

DIAMOND BAR, CA 91765

3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415) X did not did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date:

DEC 31 2012**PAT S. SWEETEN**Clerk, by
(Secretario)**JENNIFER DALEY**Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

4. NOTICE TO THE PERSON SERVED: You are served

- a. ☒ as an individual defendant.
 b. ☐ as the person sued under their fictitious name of (specify):
 c. ☐ as an occupant
 d. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ CCP 415.48 (occupant)

☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)
☐ other (specify):

5. ☐ by personal delivery on (date):

Page 1 of 3

PLAINTIFF (Name): Additional Parties Attachment form is attached.

CASE NUMBER:

DEFENDANT (Name): MARK SERRATO AND SANDRA J. SERRATO

6. Unlawful detainer assistant (complete if plaintiff has received any help or advise for pay from an unlawful detainer assistant):

- a. Assistant's name :
- b. Telephone no.:
- c. Street address, city, and ZIP:

- d. County of registration :
- e. Registration no. :
- f. Registration expires on (date):

SHORT TITLE: HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR HOME EQUITY LOAN v. SERRATO, et al.

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☒ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN TRUST
SERIES ACE 2006-HE1

FOR COURT USE ONLY

**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 31 2012

**CLERK OF THE SUPERIOR COURT
By Jennifer Daley, Deputy**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address).

JAMES T. LEE, SBN 110838
BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP
20955 PATHFINDER ROAD, SUITE 300
DIAMOND BAR, CA 91765

TELEPHONE NO. (626) 915-5714 FAX NO. (909) 595-7640

ATTORNEY FOR (Name): PLAINTIFF

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

STREET ADDRESS: 24405 AMADOR ST

MAILING ADDRESS

CITY AND ZIP CODE: HAYWARD, 94544

BRANCH NAME: HAYWARD HALL OF JUSTICE-HAYWARD HALL OF J

CASE NAME: ***SEE ADDITIONAL PAGE***

CASE NUMBER:

JUDGE:

DEPT:

HC12661699

CIVIL CASE COVER SHEET

☐ Unlimited (Amount demanded exceeds \$25,000) ☒ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant (Cal Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PVPD/WB (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product Liability (24)
☐ Medical malpractice (45)
☐ Other PVPD/WB (23)

Non-PVPD/WB (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PVPD/WB tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance Coverage (18)
☐ Other Contract (37)

Real Property

☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☒ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): ONE

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: DECEMBER 21, 2012

JAMES T. LEE, SBN 110838

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 3

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other P/DPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress

Other P/DPD/WD

Non-P/DPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-P/DPD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach-Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment *(Out of County)*
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SHORT TITLE: HSBC BANK USA, NATIONAL ASSOCIATION,
AS TRUSTEE FOR HOME EQUITY LOAN v. SERRATO, et
al.

CA. NUMBER:

CASE NAME

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN
v. SERRATO, et al.

(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 3 of 3

NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.

1. If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. If you file this form, your claim will be determined in the eviction action against the persons named in the Complaint.
3. If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address):

TELEPHONE NO.:

FOR COURT USE ONLY

ATTORNEY FOR (Name):

NAME OF COURT: SUPERIOR COURT OF THE STATE OF CALIFORNIA

STREET ADDRESS: COUNTY OF ALAMEDA

MAILING ADDRESS: 24405 AMADOR ST

CITY AND ZIP CODE: HAYWARD, CALIFORNIA 94544

BRANCH NAME: HAYWARD HALL OF JUSTICE-HAYWARD HALL OF JU:

PLAINTIFF: ***SEE ADDITIONAL PAGE***

DEFENDANT: MARK SERRATO; SANDRA J. SERRATO; and DOES 1 to 10, inclusive

PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

CASE NUMBER

HG12661699

Complete this form only if ALL of these statements are true:

1. You are NOT named in the accompanying Summons and Complaint.
2. You occupied the premises on or before the date the unlawful detainer (eviction) Complaint was filed.
3. You still occupy the premises.

(To be completed by the process server)

DATE OF SERVICE:

(Date that this form is served or delivered, and posted, and mailed by the officer or process server)

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit No., city and ZIP code):
3. The address of "the premises" subject to this claim is (address):
4. On (insert date): , the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is the court filing date on the accompanying Summons and Complaint.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of right to possession, I will be added as a defendant to the unlawful detainer (eviction) action
10. (Filing Fee) I understand that I must go to the court and pay a filing fee of \$ or file with the court the form "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file with the court the form for waiver of court fees within 10 days from the date of service on this form (excluding court holidays), I will not be entitled to make a claim of right of possession.

(Continued on reverse)

PLAINTIFF (Name): ***SEE ADDITIONAL PAGE***

CASE NUMBER

DEFENDANT (Name): MARK SERRATO; SANDRA J. SERRATO; and
DOES 1 to 10, inclusive

NOTICE: If you fail to file this claim, you will be evicted without further hearing.

1. *(Response required within five days after you file this form)* I understand that I have *five days* (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

2. **Rental Agreement.** I have *(check all that apply to you)*:

- a. ☐ an oral rental agreement with the landlord.
- b. ☐ a written rental agreement with the landlord.
- c. ☐ an oral rental agreement with a person other than the landlord.
- d. ☐ a written rental agreement with a person other than the landlord.
- e. ☐ other *(explain)*:

declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison

Date:

.....
(TYPE OR PRINT NAME)

▶
(SIGNATURE OF CLAIMANT)

NOTICE: If you file this claim of right to possession, the unlawful detainer (eviction) action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

- NOTICE TO OCCUPANTS -

YOU MUST ACT AT ONCE if all of the following are true:

1. You are **NOT** named in the accompanying Summons and Complaint.
2. You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed. *(The date is the court filing date on the accompanying Summons and Complaint.)*
3. You still occupy the premises.

(Where to file this form) You can complete and **SUBMIT THIS CLAIM FORM WITHIN 10 DAYS** from the date of service (on the reverse of this form) at the court where the unlawful detainer (eviction) complaint was filed.

(What will happen if you do not file this form) If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), **YOU WILL BE EVICTED.**

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. *If you do not file this claim, you will be evicted without a hearing.*

SHORT TITLE: HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR HOME EQUITY LOAN v. SERRATO, et al.

CASE NUMBER.

PLAINTIFFS

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN
TRUST SERIES ACE 2006-HE1

(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

ADDITIONAL PAGE

Attach to Judicial Council Form or Other Court Paper

1 JAMES T. LEE
2 State Bar No. 110838
3 BARRETT DAFFIN FRAPPIER
4 TREDER & WEISS, LLP
5 20955 Pathfinder Road, Suite 300
6 Diamond Bar, CA 91765
7 (626) 915-5714 - Phone
8 (909) 595-7640 - Fax
9 JAMESL@BDFGROUP.COM

Attorneys for Plaintiff

ENDORSED
FILED
ALAMEDA COUNTY

DEC 31 2012

CLERK OF THE SUPERIOR COURT
By Jennifer Galey, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA, HAYWARD HALL OF JUSTICE

10
11 HSBC BANK USA, NATIONAL
12 ASSOCIATION, AS TRUSTEE FOR HOME
13 EQUITY LOAN TRUST SERIES ACE
14 2006-HE1

15 Plaintiff,

16 vs.

17
18 MARK SERRATO; SANDRA J. SERRATO;
19 and DOES 1 to 10, inclusive,

20 Defendants.

CASE NO.

HC12661699

COMPLAINT FOR UNLAWFUL DETAINER
(DEMAND UNDER \$10,000)

(Action based on Cal. Code of Civ. Pro. §§ 1161a(b)(3))

21
22 Plaintiff alleges the following:

23
24 1. Plaintiff HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR
25 HOME EQUITY LOAN TRUST SERIES ACE 2006-HE1 is the current owner of certain real
26 property and improvements thereon commonly known as 19390 COREY WY, CASTRO
27 VALLEY, CALIFORNIA 94546 following a non-judicial foreclosure sale held in accordance with

COMPLAINT FOR UNLAWFUL DETAINER

1 California Civil Code §§ 2924 et seq. Plaintiff's title was duly perfected by Trustee's Deed Upon
2 Sale recorded on November 16, 2012 as Instrument No. 2012385299 in the Office of the Alameda
3 County Recorder, a true and correct copy of which is attached hereto as Exhibit "1" and
4 incorporated herein by this reference.

5
6 2. Defendants, MARK SERRATO AND SANDRA J. SERRATO, are the current
7 occupants of the real property and were the original trustors under the foreclosed deed of trust or
8 the successors-in-interest to such original trustors and the last vested owners of record as of the
9 foreclosure sale date.

10
11 3. The true names and capacities, whether individual, corporate, associate or otherwise
12 of defendants named herein as DOES 1 through 10, and of each of them, are unknown to plaintiff
13 who therefore sues said defendants by their fictitious names as allowed by California Code of Civil
14 Procedure § 474. Plaintiff asks leave of the court to amend its complaint to include the true names
15 and capacities of said defendants when the same have been ascertained.

16
17
18 4. Plaintiff is informed and believes and based thereon alleges that each defendant
19 sued herein as DOE 1 through 10, inclusive, claims a possessory interest in the real property
20 hereafter described as a tenant or successor-in-interest to the former owner.

21
22 5. On December 10, 2012, Defendants, MARK SERRATO AND SANDRA J.
23 SERRATO, were duly served in the manner prescribed by Cal. Code of Civ. Pro. § 1162 with
24 written notice demanding that they surrender possession of the real property to plaintiff not later
25 than three days following service of said written notice. True and correct copies of said written
26 notice with corresponding proof of service are attached hereto as Exhibits "2" and "3," respectively.
27

and incorporated herein by this reference.

6. More than three days have elapsed since the service of said written notice, but defendants have failed and refused to surrender possession of said real property and continue to occupy the real property without plaintiff's authorization or consent.

7. The fair and reasonable rental value of the real property is \$50.00 per day. Plaintiff is entitled to recover a money judgment against defendants for their continued occupancy of the real property at this daily rate from and after expiration of the notice to quit through the date of judgment.

8. Plaintiff is entitled to restitution and possession of the real property from defendants named herein pursuant to California Code of Civil Procedure §§ 1161a(b)(3) and therefore requests a judgment enforceable by any authorized law enforcement agency.

WHEREFORE, plaintiff prays judgment as follows:

1. For judgment awarding plaintiff restitution and possession of the real property;
2. For monetary damages according to proof;
3. For costs of suit incurred herein;
4. For such other and further relief as the court deems proper.

BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP

Date: December 21, 2012

By:

JAMES F. LEE, Attorneys for Plaintiff

SEN 110838

COMPLAINT FOR UNLAWFUL DETAINER

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing UNLAWFUL DETAINER SUMMONS AND COMPLAINT

and know its contents.

CHECK APPLICABLE PARAGRAPHS

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner ☐ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am one of the attorneys for HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on DECEMBER 21, 2012, at DIAMOND BAR, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

JAMES T. LEE, SBN 110838

Type or Print Name

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL

☐ * I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

☐ ****(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG)
*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Rev 7/99

EXHIBIT 1

RECORDING REQUESTED BY:
NDEX West, LLC
15000 Surveyor Blvd., Suite 500
Addison, Texas 75001

WHEN RECORDED MAIL TO AND MAIL
TAX STATEMENT TO:
HSBC BANK USA, NATIONAL ASSOCI .et al
P.O. BOX 2103
BUFFALO NY 14240

COPY of Document Recorded
at Alameda County Recorder
2012385299 11/16/2012
has not been compared with original.
Original will be returned when process
has been completed.

Fee: 21.00 DTT: 0.00 Total 21.00

TS No.: 20090134002331
Order No.: 913869

Space above this line is for Recorder's use only

CORRECTIVE TRUSTEE'S DEED UPON SALE

This Trustees Deed Upon Sale is being recorded to replace the Trustees Deed Upon Sale recorded on August 27, 2012 as Instrument No. 2012279879 to correct the Grantee Name

The undersigned grantor declares:

- 1) The Grantee herein WAS the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with cost was: \$557,171.69
- 3) The amount paid by the grantee at the trustee sale was: \$350,000.00
- 4) The documentary transfer tax is \$0.00
- 5) Said property is in the city of CASTRO VALLEY
- 6) APN #084C-0783-012

and NDEX West, LLC (herein called Trustee), as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without covenant or warranty, express or implied, to:

HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR ACE SECURITIES CORP. HOME EQUITY LOAN TRUST, SERIES 2006-HE1, ASSET BACKED PASS-THROUGH CERTIFICATES

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of ALAMEDA, State of California, described as follows:

"See Legal Description Attached as Exhibit 'A'"

RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust dated 10/13/2005 and executed by **MARK SERRATO AND SANDRA J. SERRATO** Trustor(s), and recorded on 10/27/2005 as Instrument No. 2005462885 of official records of **ALAMEDA** County, California and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County, and such default still existed at the time of sale.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been complied with.

TS No.: 20090134002331

Order No.: 913869

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust, sold the herein described property at public auction on 8/22/2012. Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid being \$350,000.00 in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the Time of said Trustee's Sale.

Dated: November 14, 2012

NDEX West, LLC as Trustee

By:  Ricardo Juarez, Assistant Director, Operations

STATE OF TEXAS }

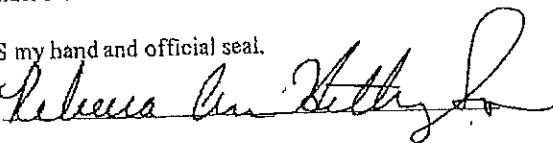
COUNTY OF DALLAS }

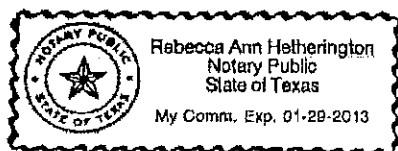
On November 14, 2012 before me, Rebecca Ann Hetherington, personally appeared Ricardo Juarez, Assistant Director, Operations, who proved to me on the basis of satisfactory evidence (identified by TX DL) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature





TS No.: 20090134002331

Order No.: 913869

EXHIBIT A

PORTION OF THE 1.20 ACRE TRACT OF LAND DESCRIBED IN THE DEED BY MARTIN I. MADISON TO FRED SMITH AND EMMA D. SMITH, DATED JUNE 15, 1943, RECORDED JUNE 26, 1943 IN BOOK 4376 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 275, UNDER SERIES NO. QQ/31097, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERN LINE OF SAID 1.20 ACRE TRACT WITHIN THE NORTHERN LINE OF HEYER AVENUE OR COUNTY ROAD NUMBER 7636; RUNNING THENCE ALONG SAID LINE OF HEYER AVENUE 86 DEGREES 45' EAST, 89.82 FEET; THENCE NORTH 3 DEGREES 15' EAST, 115.50 FEET; THENCE NORTH 86 DEGREES 45' WEST, 89.82 FEET TO THE WESTERN LINE OF SAID 1.20 ACRE TRACT; AND THENCE ALONG THE LAST NAMED LINE SOUTH 3 DEGREES 15' WEST, 115.50 FEET TO THE POINT OF BEGINNING.

EXHIBIT 2

BARRETT DAFFIN FRAPPIER

TREDER & WEISS, LLP

A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS

ATTORNEYS AND COUNSELORS AT LAW

20955 PATHFINDER ROAD
SUITE 300
DIAMOND BAR, CALIFORNIA 91765
TELEPHONE: (626) 915-5714
TELECOPIER: (909) 595-7640

December 07, 2012

NOTICE TO ANY RENTERS LIVING AT PROPERTY:

19390 COREY WY, CASTRO VALLEY, CALIFORNIA 94546

Our File No.: 00000003439486

The attached notice means that your home was recently sold in foreclosure and the new owner plans to evict you.

You should talk to a lawyer NOW to see what your rights are. You may receive court papers in a few days. If your name is on the papers it may hurt your credit if you do not respond and simply move out.

Also, if you do not respond within five days of receiving the papers, even if you are not named in the papers, you will likely lose any rights you may have. In some cases, you can respond without hurting your credit. You should ask a lawyer about it.

You may have the right to stay in your home for 90 days or longer, regardless of any deadlines stated on any attached papers. In some cases and in some cities with a "just cause for eviction law," you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

You may have the right to stay in your home for longer than 90 days. If you have a lease that ends more than 90 days from now, the new owner must honor the lease under many circumstances. Also, in some cases and in some cities with a "just cause for eviction law," you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

How to Get Legal Help

If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpca.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

**Barrett Daffin Frappier
Treder & Weiss, LLP**

A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS

ATTORNEYS AND COUNSELORS AT LAW

20955 PATHFINDER ROAD
SUITE 300
DIAMOND BAR, CALIFORNIA 91765
TELEPHONE (626) 915-5714
TELECOPIER (909) 595-7640

December 07, 2012

MARK SERRATO AND SANDRA J. SERRATO
AND OTHER UNKNOWN OCCUPANTS
19390 COREY WY
CASTRO VALLEY, CALIFORNIA 94546

THREE DAY NOTICE TO QUIT

(Code Civ. Proc. §§ 1161a(b)(3); 15 U.S.C. §§ 5201, 5220)

YOU ARE HEREBY NOTIFIED that HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN TRUST SERIES ACE 2006-HE1 is the new owner of the real property located at 19390 COREY WY, CASTRO VALLEY, CALIFORNIA 94546 ("the Property"), having acquired title at or following a non-judicial foreclosure sale held in accordance with Civ. Code § 2924 et seq. under the power of sale contained in that certain Deed of Trust executed by MARK SERRATO AND SANDRA J. SERRATO, as trustor, and recorded on October 27, 2005 as Instrument No. 2005462885 in the Office of the ALAMEDA County Recorder. The new owner's title has been duly perfected by Trustee's Deed Upon Sale, or by Grant Deed, recorded in the Office of the ALAMEDA County Recorder. State law allows the new owner to remove tenants or subtenants by appropriate legal action unless local ordinances impose just cause eviction controls. Federal law provides additional protections for certain "bona fide" tenants under the Protecting Tenants at Foreclosure Act of 2009 and tenants who receive federally-subsidized housing assistance under Section 8 of the United States Housing Act.

YOU ARE FURTHER NOTIFIED that your occupancy rights shall terminate effective THREE (3) calendar days after service of this Notice. You must vacate and surrender possession of the Property before that date, or we will commence legal proceedings against you to declare your occupancy rights forfeited, to obtain restitution and possession of the Property and to obtain a money judgment against you for holdover damages and recoverable court costs.

PLEASE BE ADVISED THAT THIS LAW FIRM IS A DEBT COLLECTOR.
ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THAT PURPOSE.

**IMPORTANT NOTICE TO SERVICEMEMBERS AND THEIR DEPENDENTS:
PROTECTIONS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT**

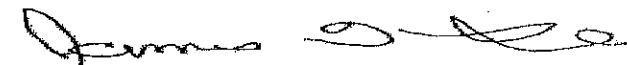
If you are a servicemember on "active duty" or "active service," or a dependent of such a servicemember, you may be entitled to certain legal rights and protections, including protection from eviction, pursuant to the Servicemembers Civil Relief Act (50 U.S.C. App. §§ 501-596), as amended, (the "SCRA") and, possibly, certain related state statutes. Eligible service can include:

1. Active duty (as defined in Section 101(d)(1) of Title 10, United States Code) with the Army, Navy, Air Force, Marine Corps or Coast Guard;
2. Active service with the National Guard;
3. Active service as a commissioned officer of the National Oceanic and Atmospheric Administration;
4. Active service as a commissioned officer of the Public Health Service; or
5. Service with the forces of a nation with which the United States is allied in the prosecution of a war or military action.

Eligible service also includes any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

If you are such a servicemember, or a dependent of such a servicemember, you should contact our eviction department at (626) 915-5714 to discuss your status under the SCRA.

BDFTW # 00000003439486



JAMES T. LEE
Attorneys for HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR HOME
EQUITY LOAN TRUST SERIES ACE 2006-HE1

PLEASE BE ADVISED THAT THIS LAW FIRM IS A DEBT COLLECTOR.
ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THAT PURPOSE.

EXHIBIT 3

Attorney of Party Without Attorney (Name and Address) Barrett, Daffin, Frappier, Treder & Weiss 20955 Pathfinder Road Diamond Bar CA Suite 300 91765 Attorney For: PLAINTIFF		Telephone No: (626)915-5714	FOR COURT USE ONLY	
		Reference Number: 3596594	3439486	
Plaintiff/Petitioner: HSBC Bank USA, National Association Defendant/Respondent: Mark Serrato, et al.				
PROOF OF SERVICE "FILE BY FAX"	Hearing Date:	Time:	Dept./Div:	Case Number: NOTICE

I, the undersigned declare that at the time of the service of the papers herein referred to, I was at least EIGHTEEN (18) years of age, and that I served the following notice:

Three Day Notice to Quit and Notice to Tenant Coversheet

On the following tenant(s): Mark Serrato

Address: 19390 Corey Wy
Castro Valley, CA 94546

Date and Time of Posting: 12/10/2012 at 12:25pm.

There being no person of suitable age or discretion to be found at the property, and a business address could not be ascertained, service was effected BY POSTING a copy for the above-named entity(s) in a conspicuous place on the property therein described, and thereafter by MAILING by first-class mail on said date a copy to each entity(s) by depositing said copies in the U.S. Mail in a sealed envelope with postage fully pre-paid, addressed to the above-named entity(s) at the place where the property is situated.

7. Person Serving (name, address, and telephone No.):

Attorney Service of San Dimas

142 East Bonita Avenue, #51
San Dimas, CA 91773
(909)394-1202 Fax (909)394-1204

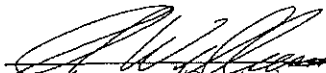
Fee for service: \$ \$80.00

Andrew Williams
Registered California Process Server.

(i) Independent Contractor
(ii) Registration No.: 37
(iii) County: San Benito

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/13/2012


(Signature)

FILE BY FAX PER CRC 2.303

Attorney of Party Without Attorney (Name and Address) Barrett, Daffin, Frappier, Treder & Weiss 20955 Pathfinder Road Diamond Bar CA Suite 300 Attorney For: PLAINTIFF 91765		Telephone No: (626)915-5714	FOR COURT USE ONLY	
		Reference Number: 3596595	3439486	
Plaintiff/Petitioner: HSBC Bank USA, National Association Defendant/Respondent: Mark Serrato, et al.				
PROOF OF SERVICE "FILE BY FAX"	Hearing Date:	Time:	Dept./Div.:	Case Number NOTICE

I, the undersigned declare that at the time of the service of the papers herein referred to, I was at least EIGHTEEN (18) years of age, and that I served the following notice:

Three Day Notice to Quit and Notice to Tenant Coversheet

On the following tenant(s): Sandra J. Serrato

Address: 19390 Corey Wy
Castro Valley, CA 94546

Date and Time of Posting: 12/10/2012 at 12:25pm.

There being no person of suitable age or discretion to be found at the property, and a business address could not be ascertained, service was effected BY POSTING a copy for the above-named entity(s) in a conspicuous place on the property therein described, and thereafter by MAILING by first-class mail on said date a copy to each entity(s) by depositing said copies in the U.S. Mail in a sealed envelope with postage fully pre-paid, addressed to the above-named entity(s) at the place where the property is situated.

FILE BY FAX PER CRC 2.303

7. Person Serving (name, address, and telephone No.):

Attorney Service of San Dimas

142 East Bonita Avenue, #51
San Dimas, CA 91773
(909)394-1202 Fax (909)394-1204

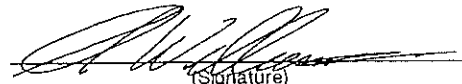
Fee for service: \$ \$0.00

Andrew Williams
Registered California Process Server:

- (i) Independent Contractor
- (ii) Registration No.: 37
- (iii) County: San Benito

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/13/2012


(Signature)

Attorney of Party Without Attorney (Name and Address) Barrett, Daffin, Frappier, Treder & Weiss 20955 Pathfinder Road Diamond Bar CA Suite 300 Attorney For: PLAINTIFF		Telephone No: (626)915-5714	FOR COURT USE ONLY	
		Reference Number: 3596596	3439486	
Plaintiff/Petitioner: HSBC Bank USA, National Association Defendant/Respondent: Mark Serrato, et al.				
PROOF OF SERVICE "FILE BY FAX"	Hearing Date:	Time:	Dept./Div:	Case Number NOTICE

I, the undersigned declare that at the time of the service of the papers herein referred to, I was at least EIGHTEEN (18) years of age, and that I served the following notice:

Three Day Notice to Quit and Notice to Tenant Coversheet

On the following tenant(s): All Occupants in Care of Named Tenant, Mark Serrato;
Sandra J. Serrato

Address: 19390 Corey Wy
Castro Valley, CA 94546

Date and Time of Posting: 12/10/2012 at 12:25pm.

There being no person of suitable age or discretion to be found at the property, and a business address could not be ascertained, service was effected BY POSTING a copy for the above-named entity(s) in a conspicuous place on the property therein described, and thereafter by MAILING by first-class mail on said date a copy to each entity(s) by depositing said copies in the U.S. Mail in a sealed envelope with postage fully pre-paid, addressed to the above-named entity(s) at the place where the property is situated.

7. Person Serving (name, address, and telephone No.):

Attorney Service of San Dimas
142 East Bonita Avenue, #51
San Dimas, CA 91773
(909)394-1202 Fax (909)394-1204

Fee for service: \$ \$0.00

Andrew Williams
Registered California Process Server:
(i) Independent Contractor
(ii) Registration No.: 37
(iii) County: San Benito

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/13/2012


(Signature)

EXHIBIT 2

1 Mark Serrato
2 19390 Corey Way
3 Castro Valley, CA 94546
4 (510) 306-7409

5 Defendant, In pro se

7 IN THE UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA

10 HSBC BANK USA, NATIONAL
11 ASSOCIATION, AS TRUSTEE FOR
12 HOME EQUITY LOAN TRUST SERIES
13 ACE 2006-HEI,

Case No. **C13-1968** JCS
NOTICE OF REMOVAL

14 Plaintiff,

15 vs.

16 MARK SERRATO; SANDRA J.
17 SERRATO; AND DOES 1 TO 10,
18 INCLUSIVE

19 Defendants.
20

21 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND THE
22 HONORABLE UNITED STATES DISTRICT JUDGE:

23 PLEASE TAKE NOTICE that defendant Mark Serrato
24 ("Defendant") hereby removes to this Court the above-captioned action
25 described further below:

- 26 1. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE
27 SATISFIED.
28

FILED
APR 30 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

E-Filed

Filed
paid

(2) NP

ADR

1 On December 31, 2012, HSBC BANK USA, NATIONAL ASSOCIATION, et al,
2 ("Plaintiff") filed an unlawful detainer action in the Superior Court of California,
3 County of Alameda Defendant's demurrer to the complaint for unlawful
4 detainer was based on a
5 defective Notice to Occupants to Vacate Premises A. true and correct copy of
6 the relevant pleadings, i.e. summons and complaint, and demurrer to
7 complaint, are attached hereto as **Exhibit "A" and Exhibit "B"**, respectively.

8 2. This removal is therefore timely because it is not barred by the provisions
9 of 28 U.S.C. §1446(b).

10 3. There are no other named Defendants in the action.

11 4. No previous request has been made for the relief requested.

12 5. The Superior Court of California for the County of Alameda is located
13 within the Northern District of California. Sec 28 U.S.C. § 84(c)(1). Thus,
14 venue is proper in this Court because it is the "district and divisions
15 embracing the place where such action is pending." 28 U.S.C § 1441(a).

16 6. This Action is removable to the instant Court because it originally could
17 have been filed in this Court pursuant to 28 U.S.C § 1441(a) and/or (b).
18 The complaint presents federal questions. Supplemental jurisdiction
19 exists with respect to any remaining claims pursuant to 28 U.S.C. §1367.

20
21 **II. FEDERAL QUESTION: REMOVAL IS PROPER BECAUSE THIS COURT**
22 **HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §1331**
23 **and §1441.**

24
25 7. The complaint for Unlawful Detainer is subject to strict notice
26 requirements.

- 1 8. Defendant filed a demurrer to the Complaint based on a defective notice,
- 2 i.e., the Notice to Occupants to Vacate Premises, failed to comply with
- 3 The Protecting Tenants at Foreclosure Act [12 U.S.C. §5220].
- 4 9. Notwithstanding said violation of 12 U.S.C. §5220, the Superior Court for
- 5 the County of Alameda did not sustain the demurrer.
- 6 10. Federal question jurisdiction exists because Defendants' demurrer, a
- 7 pleading depend on the determination of Defendants' rights and Plaintiff's
- 8 duties under federal law. Wherefore, Mark Serrato, respectfully removes
- 9 this action from the California Superior Court for the County of Alameda to
- 10 this Court pursuant to 28 United States Code Sections 1331 and 1441.
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Respectfully submitted,

Dated: April 29, 2013


Mark Serrato
In pro per

CERTIFICATE OF SERVICE

I, the undersigned, declare that I am over the age of 18 and am not a party to his action. I reside in the City of ALAMEDA, California; my home address is 2149 OTIS DR, ALAMEDA, California 94501.

On the date below, I served a copy of the following document entitled:

NOTICE OF REMOVAL

on all interested parties in said case addressed as follows:

**JAMES T. LEE
BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP
20955 PATHFINDER ROAD, SUITE 300
DIAMOND BAR, CA 91765
PHONE: (626) 915-5714
FAX: (909) 595-7640**

SERVICE BY MAIL: By depositing the envelope on the date below for mailing with the United States Postal Service in ALAMEDA, California, in sealed envelope(s) with postage fully paid thereon.

FEDERAL: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am a resident of the City of ALAMEDA, State of California. This declaration is executed in ALAMEDA, California, on APRIL 29, 2013.

KATHY BRAVO
[Printed Name]

KATHY BRAVO
[Signature of Declarant]

EXHIBIT A

5

SUM-130

**SUMMONS
(CITACION JUDICIAL)
UNLAWFUL DETAINER-EVICTION
(RETENCIÓN ILÍCITA DE UN INMUEBLE-DESALOJO)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

MARK SERRATO; SANDRA J. SERRATO; and DOES 1 to 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Additional Parties Attachment form is attached.

**ENDORSED
(SOLO PARA USO DE LA CORTE)
ALAMEDA COUNTY**

DEC 31 2012

**CLERK OF THE SUPERIOR COURT
By Jennifer Daley, Deputy**

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at the court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp). Your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a status fee for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's fee must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte está cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito.) Una carta o una llamada telefónica no lo protegerán. Su respuesta por escrito tiene que estar en formato legal escrito si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de costas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), o póngase en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las costas y los costos extras por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

1. The name and address of the court is:
(El nombre y dirección de la corte es)
SUPERIOR COURT OF THE STATE OF CALIFORNIA
24405 AMADOR ST
HAYWARD, California 94544
COUNTY OF ALAMEDA
HAYWARD HALL OF JUSTICE HAYWARD HALL OF JUSTICE

CASE NUMBER
(Número del caso) **HC12661699**

2. The name, address and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado es)

JAMES T. LEE, SRN 110830
HARRETT DAEFFIN FRAPPIER TREDER & WEISS, LLP
20955 PATHFINDER ROAD, SUITE 300
DIAMOND BAR, CA 91765

(006) 11-11-11

3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415) did not and for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on this page.)

Date **DEC 31 2012** PAT S. SWEETEN Clerk, by **JENNIFER DALEY** Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

1.

4. NOTICE TO THE PERSON SERVED: You are served

- a. ☒ as an individual defendant
b. ☐ as the person sued under their fictitious name of (specify)
c. ☐ as an occupant
d. ☐ on behalf of (specify)
under: CCP 416.10 (corporation) CCP 416.60 (minor)
CCP 416.20 (defunct corporation) CCP 416.70 (conservator)
CCP 416.40 (association or partnership) CCP 416.80 (authorized person)
CCP 415.46 (occupant) other (specify)

5. ☐ by personal delivery on **1/4/13**

Page 1 of 2

SUM-130

PLAINTIFF (Name) Additional parties Attachment Form is attached.	CASE NUMBER
DEFENDANT (Name) MARK SERRATO AND SANDRA J. SERRATO	

n Unlawful detainer assistant (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant)

- a Assistant's name
- b Telephone no.
- c Street address, city, and ZIP.

- d County of registration
- e Registration no.
- f Registration expires on (date)

7

SUMMONS-UNLAWFUL DETAINER-EVICTION

SUM-200A1

SHORT TITLE HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR HOME EQUITY LOAN V. GERRATO, CC AL.

CASE NUMBER

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.)

☒ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN TRUST
SERIES ACF 2006-HK1

8

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) JAMES T. LEE, SRN 110838 BARRETT CAFFIN FRAPPIER TROER & WEISS, LLP 20955 PATHFINDER ROAD, SUITE 300 DIAMOND BAR, CA 91765 TELEPHONE NO. (626) 915 5714 FAX NO. (909) 595-7640 ATTORNEY FOR (NAME) PLAINTIFF SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS 24405 AMADOR ST MAILING ADDRESS CITY AND ZIP CODE HAYWARD, 94544 BRANCH NAME HAYWARD HALL OF JUSTICE-HAYWARD HALL OF CASE NAME ***SEE ADDITIONAL PAGE***		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY DEC 31 2012 CLERK OF THE SUPERIOR COURT By Debbie Kelly, Deputy CALL NUMBER HC18661699 JURY OFF
CIVIL CASE COVER SHEET Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/>	Complex Case Designation Counter <input type="checkbox"/> Joinder <input type="checkbox"/> Filed with first appearance by defendant (Cal Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2)

1 Check one box below for the case type that best describes this case		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PVPDWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PVPDWD (23) Non-PVPDWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PVPDWD tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other Contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input checked="" type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (39) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition for arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (30)	Provisionally Complex Civil Litigation (Cal Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (46) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (77) <input type="checkbox"/> Other complaint (not specified above) (47) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management.

a ☐ Large number of separately represented parties ☐ Large number of witnesses

b ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries or in a federal court

c ☐ Substantial amount of documentary evidence ☐ Substantial postjudgment judicial supervision


3 Remedies sought (check all that apply): a ☒ monetary b ☒ nonmonetary; declaratory or injunctive relief c ☐ punitive

4 Number of causes of action (specify): **ONE**

5 This case ☐ is ☒ is not a class action suit

6 If there are any known related cases, file and serve a notice of related case. (You may use form CM 015.)

Date **DECEMBER 21, 2012**

JAMES T. LEE, SRN 110838
 (TYPE OR PRINT NAME)  (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

9

NOTICE • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code) (Cal Rules of Court, rule 3.220). Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.
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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, it must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a denial in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22) Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*

Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PIP/DWD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PI/DWD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PIP/DWD

Non-PIP/DWD (Other) Tort

Business Tort/Unfair Business Practices (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PIP/DWD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)
Unlawful Detainer
Commercial (31)
Residential (32)
Drugs (38) *if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*

Judicial Review

Asset Forfeiture (05)
Petition for Arbitration Award (11)
Writ of Mandate (02)
Writ Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental Toxic Tort (30)
Insurance Coverage Claims (except I am provisionally complex case type, listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition for Enforcement of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (47)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (not tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (01)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Larceny Claim
Other Civil Petition

01/04/2013 15:41 FAX

007/028

SHORT TITLE HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN v. SERRATO, et al. et al.	C. NUMBER
--	-----------

1 **CASE NAME**
2 HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN
3 v. SERRATO, et al.
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(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers)

This page may be used with any Judicial Council form or any other paper filed with the court

Page 3 of 3

Form Approved by the
Judicial Council of California
JCS-100 (Rev. January 1, 1987)

ADDITIONAL PAGE
Attach to Judicial Council Form or Other Court Paper

1. If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. If you file this form, your claim will be determined in the eviction action against the persons named in the Complaint.
3. If you do not file this form, you will be evicted without further hearing.

DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

- 1 My name is (specify)
- 2 I reside at (street address, unit No., city and ZIP code).
- 3 The address of "the premises" subject to this claim is (address)
- 4 On (insert date) [] [] [], the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is the court filing date on the accompanying Summons and Complaint)
- 5 I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
- 6 I was at least 18 years of age on the date the complaint was filed (the date in item 4).
- 7 I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
- 8 I was not named in the Summons and Complaint.
- 9 I understand that if I make this claim of right to possession, I will be added as a defendant to the unlawful detainer (eviction) action.
- 10 (Filing Fee) I understand that I must go to the court and pay a filing fee of \$ _____ or file with the court the form "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file with the court the form for waiver of court fees within 10 days from the date of service on this form (excluding court holidays), I will not be entitled to make a claim of right of possession.

(Continued on reverse)

[illegible]

PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

Page 1 of 3

PLAINTIFF (Name) ***SEE ADDITIONAL PAGE***

CASE NUMBER

DEFENDANT (Name) MARK SERRATO; SANDRA A. SERRATO; and
DOES 1 to 10, inclusive

NOTICE: If you fail to file this claim, you will be evicted without further hearing.

1. (Response required within five days after you file this form) I understand that I have five days (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

2. Rental Agreement. I have (check all that apply to you):

- a. ☐ an oral rental agreement with the landlord.
- b. ☐ a written rental agreement with the landlord.
- c. ☐ an oral rental agreement with a person other than the landlord.
- d. ☐ a written rental agreement with a person other than the landlord.
- e. ☐ other (explain)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date

(TYPE OR PRINT NAME)

(SIGNATURE OF CLAIMANT)

NOTICE: If you file this claim of right to possession, the unlawful detainer (eviction) action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

- NOTICE TO OCCUPANTS -

YOU MUST ACT AT ONCE if all of the following are true:

1. You are NOT named in the accompanying Summons and Complaint.
2. You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is the court filing date on the accompanying Summons and Complaint.)
3. You still occupy the premises.

(Where to file this form) You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the reverse of this form) at the court where the unlawful detainer (eviction) complaint was filed.

(What will happen if you do not file this form) If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED!

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. If you do not file this claim, you will be evicted without a hearing.

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SHORT TITLE HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR HOME EQUITY LOAN v. SERRATO, et al.

CASE NUMBER

PLAINTIFFS

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN
TRUST SERIES ACK 2006-HE1

(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not the numbers)

This page may be used with any Judicial Council form or any other paper filed with the court

ADDITIONAL PAGE

Attach to Judicial Council Form or Other Court Paper

JAMES T. LEE
State Bar No. 110838
BARRETT DAFFIN FRAPPIER
TREDER & WEISS, LLP
20955 Pathfinder Road, Suite 300
Diamond Bar, CA 91765
(626) 915-5714 - Phone
(909) 595-7640 - Fax
JAMESL@BDFGROUP.COM

Attorneys for Plaintiff

ENDORSED
FILED
ALAMEDA COUNTY

DEC 8 1 2012

CLERK OF THE SUPERIOR COURT
By Jennifer Bailey, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA, HAYWARD HALL OF JUSTICE

HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR HOME
EQUITY LOAN TRUST SERIES ACE
2006-HF1

Plaintiff,

vs.

MARK SERRATO; SANDRA J. SERRATO;
and DOES 1 to 10, inclusive.

Defendants.

CASE NO.

HC12661699

COMPLAINT FOR UNLAWFUL DETAINER
(DEMAND UNDER \$10,000)

(Action based on Cal. Code of Civ. Pro. §§ 116.6(b)(1))

Plaintiff alleges the following:

1. Plaintiff HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN TRUST SERIES ACE 2006-HF1 is the current owner of certain real property and improvements thereon commonly known as 19390 COREY WY, CASTRO VALLEY, CALIFORNIA 94546 following a non-judicial foreclosure sale held in accordance with

COMPLAINT FOR UNLAWFUL DETAINER

-1-

5. On December 10, 2012, Defendants, MARK SERRATO AND SANDRA L. SERRATO, were duly served in the manner prescribed by Cal. Code of Civ. Pro. § 1162 with written notice demanding that they surrender possession of the real property to plaintiff not later than three days following service of said written notice. True and correct copies of said written notice with corresponding proof of service are attached hereto as Exhibits "2" and "3," respectively.

and incorporated herein by this reference.

6. More than three days have elapsed since the service of said written notice, but defendants have failed and refused to surrender possession of said real property and continue to occupy the real property without plaintiff's authorization or consent.


7. The fair and reasonable rental value of the real property is \$50.00 per day. Plaintiff is entitled to recover a money judgment against defendants for their continued occupancy of the real property at this daily rate from and after expiration of the notice to quit through the date of judgment.

8. Plaintiff is entitled to restitution and possession of the real property from defendants named herein pursuant to California Code of Civil Procedure §§ 1161(a)(3) and therefore requests a judgment enforceable by any authorized law enforcement agency.

WHEREFORE, plaintiff prays judgment as follows:

1. For judgment awarding plaintiff restitution and possession of the real property;
2. For monetary damages according to proof;
3. For costs of suit incurred herein;
4. For such other and further relief as the court deems proper.

Date: December 21, 2012

By: 
JAMES F. LEE, Attorneys for Plaintiff
SUN 110838

BARRETT DAFFIN FRAPPIER TREIDT & WEISS, LLP

COMPLAINT FOR UNLAWFUL DETAINER

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing UNLAWFUL DETAINER SUMMONS AND COMPLAINT and know its contents

CHECK APPLICABLE PARAGRAPHS

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner ☐ a ☐ of a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am one of the attorneys for HSBC BANK USA, NATIONAL ASSOCIATION, AN TRUSTEE FOR a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on NOVEMBER 21, 2012 at DIAMOND BAR, California
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

JAMES T. LEE, SBN 110038

Type or Print Name

Signature

PROOF OF SERVICE

101.3a (2) CCP, Modified 5/1/09

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.
I am over the age of 18 and not a party to the within action; my business address is:

On _____, I served the foregoing document described as _____
on _____ in this action.

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list
☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL

☐ I deposited such envelope in the mail at _____, California.
The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at _____, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

☐ **BY PERSONAL SERVICE** I delivered such envelope by hand to the offices of the addressee.
Executed on _____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

This must be signed by the person who is to be served.
MAX 3001 FILE (13-000)
THE PERSONAL SERVICE SIGNATURE MUST BE THAT OF THE PERSON

18

COPY of Document Recorded
at Alameda County Recorder
2012385299 11/16/2012
has not been compared with original
Original will be returned when process
has been completed.

RECORDING REQUESTED BY:
NDEX West, LLC
15000 Surveyor Blvd., Suite 500
Arlington, Texas 75001

WHEN RECORDED MAIL TO AND MAIL
TAX STATEMENT TO:
HSBC BANK USA, NATIONAL ASSOCIATION et al
P O BOX 2103
BUFFALO NY 14240

Fee: 21.00 DTT: 0.00 Total 21.00

TS No 2009013400233
Order No 913869

Space above this line is for Recorder's use only

CORRECTIVE TRUSTEE'S DEED UPON SALE

This Trustee's Deed Upon Sale is being recorded to replace the Trustee's Deed Upon Sale recorded on August 27, 2012 as Instrument No. 2012279879 to correct the Grantee Name.

The undersigned grantor declares:

- 1) The Grantee herein ~~WAS~~ the foreclosing beneficiary
- 2) The amount of the unpaid debt together with cost was: \$557,171.69
- 3) The amount paid by the grantee at the trustee sale was: \$350,000.00
- 4) The documentary transfer tax is \$0.00
- 5) Said property is in the city of CASTRO VALLEY
- 6) APN # 084C-0783-012

and NDEX West, LLC (herein called Trustee), as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without covenant or warranty, express or implied, to:

HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR ACE SECURITIES CORP. HOME EQUITY LOAN TRUST, SERIES 2006-HE1, ASSET BACKED PASS-THROUGH CERTIFICATES

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of ALAMEDA, State of California, described as follows:

"See Legal Description Attached as Exhibit 'A'"

RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust dated 10/13/2005 and executed by **MARK SERRATO AND SANDRA J. SERRATO** Trustor(s), and recorded on 10/27/2005 as Instrument No. 2005462885 of official records of **ALAMEDA** County, California and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County, and such default still existed at the time of sale.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been complied with.

20

EXHIBIT 1

19

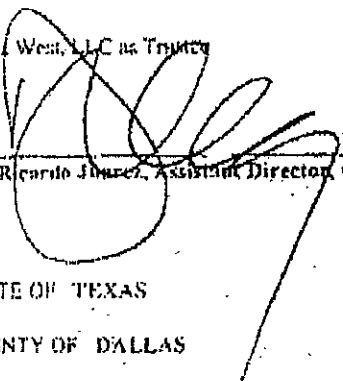
TS No. 20090134002331

Order No. 413869

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust, sold the herein described property at public auction on 8/22/2012. Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid being \$150,000.00 in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the Time of said Trustee's Sale.

Dated: November 14, 2012

NDEI West, LLC as Trustee

By: 
Ricardo Juarez, Assistant Director, Operations

STATE OF TEXAS

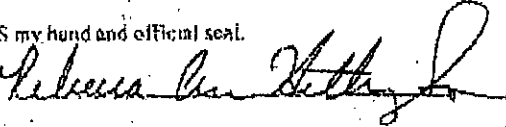
COUNTY OF DALLAS

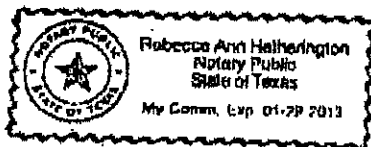
(On November 14, 2012 before me, Rebecca Ann Hetherington, personally appeared Ricardo Juarez, Assistant Director, Operations, who proved to me on the basis of satisfactory evidence (identified by TX D.) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature





21

TS No. 20090134002331

Order No. 913869

EXHIBIT A

PORTION OF THE 1.20 ACRE TRACT OF LAND DESCRIBED IN THE DEED BY MARTIN J. MADISON TO FRED SMITH AND EMMA D. SMITH, DATED JUNE 15, 1943, RECORDED JUNE 26, 1943 IN BOOK 4376 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 275, UNDER SERIES NO. 0031097, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERN LINE OF SAID 1.20 ACRE TRACT WITH THE NORTHERN LINE OF HEYER AVENUE OR COUNTY ROAD NUMBER 7636; RUNNING THENCE ALONG SAID LINE OF HEYER AVENUE 86 DEGREES 45' EAST, 89.62 FEET; THENCE NORTH 3 DEGREES 15' EAST, 115.50 FEET; THENCE NORTH 86 DEGREES 45' WEST, 89.62 FEET TO THE WESTERN LINE OF SAID 1.20 ACRE TRACT, AND THENCE ALONG THE LAST NAMED LINE SOUTH 3 DEGREES 15' WEST, 115.50 FEET TO THE POINT OF BEGINNING

EXHIBIT 2

23

**BARRETT DAFFIN FRAPPIER
TREDER & WEISS, LLP**

A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS

ATTORNEYS AND COUNSELLORS AT LAW

3835 PATHFINDER ROAD
SUITE 400
DIAMOND BAR, CALIFORNIA 91765
TELEPHONE (909) 915-5714
TELECOM (909) 595-7630

December 07, 2012

**NOTICE TO ANY RENTERS LIVING AT PROPERTY:
19390 COREY WY, CASTRO VALLEY, CALIFORNIA 94546**

Our File No.: 00000003439486

The attached notice means that your home was recently sold in foreclosure and the new owner plans to evict you.

You should talk to a lawyer NOW to see what your rights are. You may receive court papers in a few days. If your name is on the papers it may hurt your credit if you do not respond and simply move out.

Also, if you do not respond within five days of receiving the papers, even if you are not named in the papers, you will likely lose any rights you may have. In some cases, you can respond without hurting your credit. You should ask a lawyer about it.

You may have the right to stay in your home for 90 days or longer, regardless of any deadlines stated on any attached papers. In some cases and in some cities with a "just cause for eviction law," you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

You may have the right to stay in your home for longer than 90 days. If you have a lease that ends more than 90 days from now, the new owner must honor the lease under many circumstances. Also, in some cases and in some cities with a "just cause for eviction law," you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

How to Get Legal Help

If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpen.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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CONFIDENTIAL - SECURITY INFORMATION

25

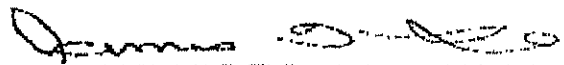
**IMPORTANT NOTICE TO SERVICEMEMBERS AND THEIR DEPENDENTS:
PROTECTIONS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT**

If you are a servicemember on "active duty" or "active service," or a dependent of such a servicemember, you may be entitled to certain legal rights and protections, including protection from eviction, pursuant to the Servicemembers Civil Relief Act (50 U.S.C. App. §§ 501-506), as amended, (the "SCRA") and, possibly, certain related state statutes. Eligible service can include:

1. Active duty (as defined in Section 101(d)(1) of Title 10, United States Code) with the Army, Navy, Air Force, Marine Corps or Coast Guard;
2. Active service with the National Guard;
3. Active service as a commissioned officer of the National Oceanic and Atmospheric Administration;
4. Active service as a commissioned officer of the Public Health Service; or
5. Service with the forces of a nation with which the United States is allied in the prosecution of a war or military action.

Eligible service also includes any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

If you are such a servicemember, or a dependent of such a servicemember, you should contact our eviction department at (626) 915-5714 to discuss your status under the SCRA.



INDENT # 00000003439486

JAMES T. LEE
Attorneys for HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR HOME
EQUITY LOAN TRUST SERIES AC - 2006-HHEI

PLEASE BE ADVISED THAT THIS LAW FIRM IS A DEBT COLLECTOR.
ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THAT PURPOSE.

26

Attorney of Party Making Affidavit (Name and Address) Barrett, Dalhn, Frappier, Treder & Woise 20955 Pathfinder Road Diamond Bar CA 91765 Attorney for PLAINTIFF		Telephone No. (626) 915-5714	FOR COURT USE ONLY
Defendant/Respondent: HSBC Bank USA, National Association Mark Serrato, et al.		Return Address 20955 Pathfinder Road Diamond Bar CA 91765	
Plaintiff/Petitioner: HSBC Bank USA, National Association		Case Number 13-00000	
PROOF OF SERVICE "FILE BY FAX"		Hearing Date	Date of Service NOTICE

I, the undersigned, declare that at the time of the service of the papers herein referred to, I was at least EIGHTEEN (18) years of age, and that I served the following notice:

Three Day Notice to Quit and Notice to Tenant, Coversheet

On the following tenant(s): Mark Serrato

Address: 19390 Corey Wy
Castro Valley, CA 94546

Date and Time of Posting: 12/10/2012 at 12:25pm.

There being no person of suitable age or discretion to be found at the property, and a business address could not be ascertained, service was effected BY POSTING a copy for the above-named entity(s) in a conspicuous place on the property therein described, and thereafter by MAILING by first-class mail on said date a copy to each entity(s) by depositing said copies in the U.S. Mail in a sealed envelope with postage fully pre-paid, addressed to the above-named entity(s) at the place where the property is situated.

FILE BY FAX PER CRC 2.303

Person Serving (Name, address, and telephone No.):

Attorney Service of San Dimas

142 East Bonita Avenue, #51

San Dimas, CA 91773

(909) 394-1202 Fax (909) 394-1204

Fee for service \$ 580.00

Andrew Williams

Registered California Process Server

(i) Independent Contractor

(ii) Registration No. 37

(iii) County San Benito

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/13/2012


(Signature)

Justices Council for PDS Unit

Proof of Service

Case 13-00000, 12/13/12

EXHIBIT B

28

01/11/2013 15:32 FAX 5105817471

Mail House Plus

0002/0008

Mark Serrato
19390 Corey Way
Castro Valley, CA 94546
(510) 306-7409

Defendant, In Pro Per

ENDORSED
FILED
ALAMEDA COUNTY

JAN 10 2013

CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA - RENE C. DAVIDSON COURTHOUSE

HSEC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
HOME EQUITY LOAN TRUST SERIES
ACE 2006-HEI,

Plaintiff,

vs.

MARK SERRATO; SANDRA J.
SERRATO; AND DOES 1 TO 10,
INCLUSIVE

Defendant(s).

) Case No. HG12661699

) DEFENDANT'S NOTICE OF DEMURRER
) AND DEMURRER TO COMPLAINT;
) MEMORANDUM OF POINTS AND
) AUTHORITIES

) Date: 1/30/13

) Time: 1:30

) Dept: 31

) Matter Originally Filed in
) Hayward Hall of Justice on
) December 31, 2012.

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on 1/30, 2013 at 1:30.

or soon thereafter as it may be heard in Dept 31 of the
above-entitled court, located at 1225 Fallon St., Oakland, CA
94612, Defendant, Mark Serrato, hereinafter ("Defendant") will
present his Demurrer to Plaintiff, HSEC BANK USA, NATIONAL

1

DEFENDANT'S NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT;
MEMORANDUM OF POINTS AND AUTHORITIES

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1 ASSOCIATION, AS TRUSTEE FOR HOME EQUITY LOAN TRUST SERIES ACE
2 2006-HEI, (hereinafter "Plaintiff") Complaint for Unlawful
3 Detainer.

4 The Demurrer will be based on Plaintiff's Complaint for Unlawful
5 Detainer, the accompanying Memorandum of Points and Authorities,
6 the records of the Court, and such other and further matters as
7 the Court may consider at the hearing on the Demurrer.
8

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10 Dated: 1/10/13

By: [Signature]
Mark Ferrato
Defendant, In Pro Per

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DEFENDANT'S NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT;
MEMORANDUM OF POINTS AND AUTHORITIES

30

DEMURRER

Defendant hereby specifically and generally demurs to the Complaint for Unlawful Detainer as follows:

Plaintiff's Complaint for Unlawful Detainer is defective in that the Notice to Quit was and is inappropriate and defective;

Plaintiff's Complaint for the Unlawful Detainer fails to state a cause of action against this demurring Defendant.¹

WHEREFORE Defendant prays:

1. That the Demurrer is sustained without leave to amend;
2. That Plaintiff take nothing by way of its Complaint for Unlawful Detainer;
3. For costs of suit incurred, if allowed;
4. For such other costs and relief as the Court may deem just and proper.

Dated: 1/10/13

By: Mark Serrato
Mark Serrato
Defendant, In Pro Per

¹ CCP §430.10(a)

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The subject property was owned by the Defendant. The property was purportedly sold at a trustee's sale pursuant to an alleged notice of default and election to sell.

Defendant resides at the subject property and has been residing there since it was purchased as his sole residence.

On or about December 10, 2012, Defendant was allegedly served with a Notice to Quit. The Notice to Quit specified that the former owner was to deliver possession of the subject.

On December 31, 2012 Plaintiff filed its Complaint for Unlawful Detainer in the Alameda County Superior Court. On January 4, 2013, Plaintiff caused its Complaint for Unlawful Detainer to be posted upon the Defendant's door.

FIRST GROUND FOR DEMURRER

Plaintiff's Complaint for Unlawful Detainer attaches and incorporates a 3 Day Notice to Quit. However, the Complaint for Unlawful Detainer specifically sets a daily rental value on the property of \$50.00 per day. This language ostensibly characterizes the Defendant as a tenant.²

² Civ. C §1940

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II.

CONCLUSION

Based on the foregoing, Defendant requests that his
Demurrer to Plaintiff's Complaint for Unlawful Detainer be
sustained without leave to amend.

Dated: 11/01/13

By: Mark Serrato

Mark Serrato

Defendant, In Pro Per

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Whether consent and acceptance of rent created a landlord-tenant relationship depends of course on the particular circumstances of each case.³

Consequently, Civ. C §1946, Notice Required to Terminate Tenancy states:

A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of hiring itself, not exceeding 30 days; provided, however, that as to tenancies from monthly to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination.

Code of Civ. Proc. §1161 (2) states, in pertinent part, that:

"When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made..."

Therefore, the mere service of a Notice to Quit on Defendant was inappropriate and inadequate.

///

///

³ Getz v. City of W. Hollywood (1991) 233 Cal. App. 3d 625, 630, 284 Cal.Rptr. 631

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PROOF OF SERVICE

I am over the age of 18 and not a party to this action.

I am a resident of or employed in the county where the mailing occurred; my business/residence address is:

3056 CASTRO VALLEY BLVD #185 CASTRO VALLEY, CA 94546

On JAN 10, 2013 I served the foregoing document(s) described as:

DEFENDANT'S NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES to the following parties:

JAMES T. LEE
BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP
20955 PATHFINDER ROAD, SUITE 300
DIAMOND BAR, CA 91765
PHONE: (626) 915-5714
FAX: (909) 595-7840

☒ (By U.S. Mail) I deposited such envelope in the mail at CASTRO VALLEY, California with postage thereon fully prepaid. I am aware that on motion of the party served, service is presumed in valid in postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (By Personal Service) I caused such envelope to be delivered by hand via messenger service to the address above;

☐ (By Facsimile) I served a true and correct copy by facsimile during regular business hours to the number(s) listed above. Said transmission was reported complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 1/10/13

Eric C. [Signature]

(NAME OF PERSON SERVING PAPERS)

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UD-105

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Mark Serrato 19390 Corey Way Castro Valley, CA 94546		TELEPHONE NO: 510-306-7409	COPY
ATTORNEY FOR (Name): In Pro Per			
NAME OF COURT: Superior Court of California County of Alameda			
STREET ADDRESS: 1225 Fallon St			
MAILING ADDRESS: Same			
CITY AND ZIP CODE: Oakland, CA 94612			
BRANCH NAME:			
PLAINTIFF: HSBC Bank USA, National Association, As Trustee for Home Equity			
DEFENDANT: Mark Serrato; Sandra J. Serrato; and DOES 1 to 10, Inclusive			
ANSWER—Unlawful Detainer			CASE NUMBER: HG12661699

1. Defendant (names):

Mark Serrato

answers the complaint as follows:

2. Check ONLY ONE of the next two boxes:

- a. ☐ Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.
- b. ☐ Defendant admits that all of the statements of the complaint are true EXCEPT
(1) Defendant claims the following statements of the complaint are false (use paragraph numbers from the complaint or explain):

☐ Continued on Attachment 2b (1).

- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (use paragraph numbers from the complaint or explain):

Defendant disputes Plaintiff's ownership of the property. Defendant was served with a 3 day notice to quit but Plaintiff is requesting fair rental value. No rental agreement has been signed

☒ Continued on Attachment 2b (2).

3. AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in the space provided at the top of page two (item 3j)).

- a. ☐ (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b. ☐ (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c. ☐ (nonpayment of rent only) On (date): before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d. ☐ Plaintiff waived, changed, or canceled the notice to quit.
- e. ☐ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f. ☐ By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or laws of the United States or California.
- g. ☐ Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

(Also, briefly state the facts showing violation of the ordinance in item 3j.)

- h. ☐ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i. ☒ Other affirmative defenses are stated in item 3j.

Page 1 of 2

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UD-105

PLAINTIFF (Name): HSBC Bank USA, National Association, As Trustee for Home Eq	CASE NUMBER:
DEFENDANT (Name): Mark Serrato; Sandra J. Serrato; and DOES 1 to 10, Inclusive	HG12661699

3. AFFIRMATIVE DEFENSES (cont'd)

j. Facts supporting affirmative defenses checked above (identify each item separately by its letter from page one):

This eviction is due to a wrongful foreclosure. Defendant believes that he was not given the opportunity to save his home. Despite all the Defendant's attempts to work with the bank they still foreclosed on the property.

(1) ☐ All the facts are stated in Attachment 3j. (2) ☐ Facts are continued in Attachment 3j.

4. OTHER STATEMENTS

- a. ☐ Defendant vacated the premises on (date):
- b. ☐ The fair rental value of the premises alleged in the complaint is excessive (explain):
- c. ☐ Other (specify):

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c. ☐ reasonable attorney fees.
- d. ☐ that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e. ☒ Other (specify):

Defendant request this matter be dismissed due to wrongful foreclosure.

6. ☐ Number of pages attached (specify):

UNLAWFUL DETAINER ASSISTANT (Business and Professions Code sections 6400- 6415)

7. (Must be completed in all cases) An unlawful detainer assistant ☒ did not ☐ did for compensation give advice or assistance with this form. (If defendant has received any help or advice for pay from an unlawful detainer assistant, state:

- a. Assistant's name:
- b. Telephone No.:
- c. Street address, city, and ZIP:
- d. County of registration:
- e. Registration No.:
- f. Expires on (date):

Mark Serrato

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

Mark Serrato

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT)

COPY

Code of Civil Procedure, §§ 1013, 1013a
www.courtinfo.ca.gov

CIVIL COVER SHEET

I. (a) PLAINTIFFS

DEFENDANTS

County of Residence of First Listed Defendant Alameda
(IN U.S. PLAINTIFF CASES ONLY)

Attorneys (If Known)
In Pro Per (510) 306-7409
19390 Corey Way
Castro Valley, CA 94546

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only) and One Box for Defendant)

- | | FTF | DEF | | FTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 193 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employees' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Torts in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 415 Drug Related Seizure of Property 21 USC §21 <input type="checkbox"/> 490 Other	<input type="checkbox"/> 422 Appeal 38 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 520 Copyright <input type="checkbox"/> 530 Patent <input type="checkbox"/> 540 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 450 State Reprehension Act <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Backlogs Infringed and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 530 Securities/Commodities/Exchange <input type="checkbox"/> 490 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes				
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input checked="" type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Petitions to Vacate Sentence <input type="checkbox"/> 515 Habeas Corpus <input type="checkbox"/> 520 General <input type="checkbox"/> 525 Death Penalty <input type="checkbox"/> 540 Mardians & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainers - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 601 HIA (1993M) <input type="checkbox"/> 602 Black Lung (9213) <input type="checkbox"/> 603 DIWC/DIWW (405(g)) <input type="checkbox"/> 604 SSDI Title XVI <input type="checkbox"/> 605 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 810 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 811 IRS - Third Party 26 USC 7609				
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detention (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions						

☐ 1. Original Proceeding ☒ 2. Removed from State Court ☐ 3. Removed from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from another district (specify) ☐ 6. Multidistrict Litigation

12 USC 5220

Brief description of cause:
Wrongful Eviction

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

JURY DEMAND: ☐ Yes ☐ No

在历史上, 国家从来没有停止过对宗教的干预。

JUDGE

DOCKET NUMBER

(Place an "X" In One Box Only) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

DATE (7/29/2013)

SIGNATURE OF ATTORNEY OF RECORD Mark Serrato

Mark Serrato